

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4337 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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FAKIR MUKHTARBHAI ACCHUBHAI

Versus

DISTRICT MAGISTRATE

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Appearance:

MR UI VYAS for Petitioner

MR HH PATEL AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/12/1999

ORAL JUDGEMENT

1. The District Magistrate, Bhavnagar ordered  
detention of the petitioner in exercise of powers under  
Section 3(1) of the Gujarat Prevention of Antisocial

Activities Act (for short PASA Act) on March 22, 1999.

2. In the grounds of detention, the Detaining Authority took into consideration four offences registered against the detenu so also the statements of three anonymous witnesses recorded on 18-2-1999 and 21-2-1999, and arrived at a subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. The authority also considered the possibility of resorting to less drastic alternative remedy and recorded that in order to immediately prevent the petitioner from pursuing his illegal and antisocial activities detention under PASA Act was the only remedy that can be resorted to.

3. The petitioner challenges the order of detention mainly on the ground that the statements were verified by the Detaining Authority on 22-3-1999 and the order was also passed on the same day and therefore there was no time for the Detaining Authority to arrive at a genuine subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act.

4. None of the respondents have filed any affidavit-in-reply.

5. Mr. Vyas learned advocate for the petitioner has relied on this very ground. He pressed into service the decision in the case of Kalidas C. Kahar v. State of Gujarat 1993(2) GLR 1659.

6. Mr. H.H. Patel, learned AGP has opposed this petition. He submitted that the quickness on the part of the Detaining Authority may not be taken as non application of mind.

7. The Detaining Authority has exercised the powers under Section 9(2) of the PASA Act and thereby has claimed privilege of not disclosing the identity of the witnesses. These powers are exercised by recording a subjective satisfaction that the statements made by these witnesses and the fear expressed by them qua the petitioner is found to be correct.

While exercising the powers under Section 9(2) of the PASA Act, the Detaining Authority has also to keep in mind that exercise of powers under Section 9(2) of the PASA Act would deprive the detenu of his right of making an effective representation. He has therefore to consider as to what is to be given preference. Public interest and then exercise of powers under Section 9(2)

of the PASA Act and the right of the detenu in exercise of powers under Section 9(2). Each case has to be judged on its own merits and the Detaining Authority has to strike a balance between the interest of the detenu on one hand and the public interest on the other.

For arriving at a subjective satisfaction the authority has to consider the truthfulness and genuineness of the fear expressed by the witnesses. The authority has also to take into consideration the material placed before it for exercising the powers both under Section 9(2) as well under Section 3(1) of the PASA Act. This entire exercise would require time. As it is seen in the instant case, the whole exercise was undertaken at one go in a single day, i.e. 22-3-1999. No attempt is made to explain how this was done.

8. It may further be noted that there is no contemporary material to lend support to assertion of witnesses and satisfaction of Detaining Authority about fear expressed by witnesses. [Chandrakant N. Patel v. State of Gujarat and others 1994(1) GLR 761]

9. In view of the decision in the case of Kalidas C. Kahar v. State of Gujarat 1993(2) GLR 1659, there was no time lag between the verification of the statements and the orders passed which could have possibilised for the Detaining Authority to undertake this exercise.

10. The petition is therefore deserves to be allowed and same is hereby allowed. The petitioner-detenu Fakir Mukhtarbhai Acchubhai be set at liberty forthwith if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)